U.S. Department of Justice

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VIA FACSIMILE [(619) 687-2666]
Matthew Winter, Esq.
Federal Defenders of San Diego, Inc.
225 Broadway, Ste. 900
San Diego, CA 92101-5008

Re: United States v. Vincente Pineda-Torres

Dear Matt:

I am writing to provide you with notice of expert testimony, pursuant to Rule 16(a)(1)(E) of the Federal Rules of Evidence, which the government intends to introduce during trial of the above-entitled matter. Please provide all reciprocal notice and discovery contemplated by Rule 16(b) by October 31, 2000.

1. Narcotics Expert

The Government intends to introduce the testimony of a narcotics expert. The narcotics expert will be United States Customs Service Special Agent Robert Villars. The agent's specialized background and training in narcotics are set forth in the attached resume.

Agent Villars will testify to the wholesale and retail values of the 42.7 lbs of marijuana seized in this case, both in Tijuana and San Diego. His conservative estimates of those values will be as follows: $6,300.00 (wholesale in Tijuana); $13,650.00 (wholesale in San Diego), $33,600.00 (street value in San Diego, based on street price ranging from $50 per ounce, low end). Agent Villars will testify that $50 per ounce is toward the low end of the range for marijuana sold on the street in California. His testimony will explain that drivers have the critical responsibility of passing by law enforcement officials who are trained to detect persons transporting such loads. This risk factor accounts for the increase in the wholesale value.

Agent Villars will state his opinion that the amount seized was for distribution rather than personal use. This opinion will be based on the value and amount of marijuana, and the manner in which the marijuana was packaged.

The witness will also testify regarding certain modus operandi of marijuana smuggling organizations operating across the international border between the United States and Mexico. The witness will base his opinions on his background and experience, review of pertinent literature, and conversations with informants, cooperating defendants and other sources. More specifically, Agent Villars will testify that: (1) the drivers of load vehicles typically do not own the drugs they are transporting; (2) the driver of a load vehicle is typically not the person responsible for loading the drugs into the car, and, accordingly, fingerprinting is generally not a useful tool in the investigation of border busts; and (3) the driver of a load vehicle is typically not entrusted with transporting the vehicle to a load house, but usually only to a neutral site.

Agent Villars will base his opinions on his experience investigating these types of cases. His opinion will be based on his hands-on experience interrogating smugglers, debriefing confidential informants and discussing intelligence information with other Customs agents. He has investigated numerous drug trafficking investigations along the U.S./Mexican border. A copy of his resume and value memorandum are enclosed for your information.

2. DEA Chemist

The Government also intends to introduce the testimony of DEA Chemist Fracia Martinez. Her resume and analysis are attached. The DEA chemist will testify that she performed various tests on the substance seized from your client, and that these tests all indicated marijuana. She will base this opinion on her background, education and experience, along with her knowledge and use of accepted scientific methods of testing.

Very truly yours,

GREGORY A. VEGA
United States Attorney

Scott H. Saham
Assistant United States Attorney

Attachments: Chemist's resume and Analysis
Customs Agents's resume and value information

II

STATEMENT OF THE FACTS

On August 2, 2000, Vicente Pineda-Torres ("Defendant") entered the United States from Mexico at the San Ysidro POE. Concealed within the 1991 Mercury Cougar he was driving was 42.7 lbs. of marijuana. Defendant told Immigration Inspector Cruz that the vehicle belonged to a friend. The defendant appeared nervous. Defendant also stated that he had visited a friend in Tijuana the previous night.

A canine detected a narcotics odor in the vehicle at the secondary inspection area. Subsequently, 23 packages of marijuana were found, in a specially built compartment in the dashboard of the vehicle. A layer of felt blocked the vents in the front dash. The Defendant was advised of his Miranda rights and invoked them. The Defendant has an extensive criminal history.

III

WITNESSES

The Government expects to call the following witnesses in its case-in-chief:

1. Steven Tibbetts
2. C. Cruz
3. Dino Polselli
4. Suzanne Harris
5. Expert Witness. The Government will call Customs Special Agent Robert Villars to testify as an expert witness regarding the wholesale value of marijuana (in Mexico and in the United States) and the street value of the marijuana seized from the Defendant. This agent will opine as to what constitutes a personal use amount of marijuana. This agent will further testify regarding the structure

of drug smuggling organizations. He will base his opinions upon his experience as a Customs agent.

6. Drug Enforcement Administration ("DEA") Forensic Chemist Fracia Martinez. Absent a stipulation, the Government will call Ms. Martinez as an expert witness in the field of forensic chemistry. Ms. Martinez will testify that the substance seized from the Defendant was marijuana, a Schedule I Controlled Substance. She will base her opinion on her experience as a DEA chemist.

IV

STIPULATIONS

To expedite the trial the government has requested a stipulation regarding the amount, chemical makeup and the chain of custody of the substance seized from the defendant's vehicle.

V

EXHIBITS

The Government will file an exhibit list at the time of trial. The Government requests that defense counsel examine the exhibits prior to trial in order to expedite the proceedings. The Government also requests time to examine the defense exhibits before trial.

VI

JURY INSTRUCTIONS

The Government will file proposed jury instructions separately.

VII

APPLICABLE LAW AND EVIDENTIARY ISSUES

A. 21 U.S.C. §§ 952 AND 960, IMPORTATION OF A CONTROLLED SUBSTANCE

The United States must prove beyond a reasonable doubt that:

1. Defendant intentionally brought marijuana into the United States;

testimony was specifically relevant to the following issues: (1) the timing of the smuggling venture, ie. the fact that someone is waiting for the marijuana; and (2) to show that the driver is not a rich drug lord with a proprietary interest in the drugs but, just an everyday person being used to bring the drugs across. This testimony provides the context which allows a jury to understand how drug couriers work. That the driver is not just going off on a lark, but is delivering the vehicle loaded with drugs at a time and place specified and that the driver does not necessarily have large amounts of money.

Accordingly, the limited expert testimony was relevant here, in order to clarify for the jury, the Government theory of the case: That Pineda did not have a proprietary interest in the marijuana, but was simply acting as a courier. The expert testimony was not offered in order to impute knowledge to Pineda regarding the other functions necessary to grow marijuana, package it, transport it to the border, and ultimately to distribute it in the United States. The testimony was simply offered to show the jury that Pineda was only performing one role in this process. Simply put, the testimony explained that Pineda was not the wealthy proprietor of the marijuana, but was just a paid courier, who was delivering the marijuana for someone else to someone else. This fact, is contrary to the popular notion of a drug smuggler. Moreover, this testimony is undisputably relevant to Count 2 of the Indictment, possession with the intent to distribute, as the Government was required to prove that Pineda intended to deliver

the marijuana to someone else. The testimony explained that Pineda was not crossing the border on a lark, but was crossing the border knowingly and intentionally with the purpose of delivering the marijuana to another individual at a preset time and location. The testimony was relevant to Pineda's knowledge, motive, and intent. The testimony in no way imputed knowledge of other individuals involved in the marijuana smuggling business to Pineda, nor did it create an inference that he had an ownership interest in the marijuana. The expert merely explained that Pineda's role as knowing courier was a very limited one.

Additionally, the testimony at issue is probative to explain or counter the defense argument that the lack of fingerprints and other evidence tying Pineda to the drugs is sufficient to raise a reasonable doubt. [RT I 80-81; ER 99-100; SER 5, 11-12.] Accordingly, Agent Villars' very brief testimony regarding the compartmentalization of function within the drug smuggling business was clearly relevant to the crimes charged and to the factual issues involved in this case, where Pineda stood accused of importing marijuana into the United States (Count 1) and possession with the intention of delivering it to somebody else (Count 2).

3. Campos Supports the District Court's Pretrial Ruling That Limited Testimony Regarding the Compartmentalization of a Drug Smuggling Organization Is Admissible

In United States v. Campos, 217 F.3d 707, 712 (9th Cir. 2000), this Court affirmed, under an abuse of discretion standard, a district court's pretrial ruling and subsequent admission of expert

BEST AVAILABLE COPY

SOMEHOW, TOOK IT TO SOME GARAGE AND SECRETED 42 POUNDS OF MARIJUANA WITHIN THE VEHICLE. THAT'S JUST NOT A REASONABLE EXPLANATION. THAT'S SOMETHING THAT IS BASED ON SPECULATION AND A CHAIN OF NEVER ENDING WAYS.

THIS IS A SUBSTANCE THAT AGENT VILLARS TOLD YOU IS WORTH SOMEWHERE IN THE NEIGHBORHOOD OF $30- TO $50,000. IF YOU ARE A DRUG SMUGGLER, ARE YOU GOING TO BRING YOUR PRODUCT IN THE UNITED STATES BY TAKING YOUR $30- TO $50,000 PRODUCT, HIDING IT IN A CAR, SOMEONE WHO DOESN'T KNOW ABOUT IT, STICK IT IN THERE, ESPECIALLY IN A MANNER WHERE THE AIR-CONDITIONING AND THE DEFROST SYSTEM IS NOT GOING TO WORK. WHAT'S THE FIRST THING YOU ARE GOING TO DO IF YOU GET IN THE CAR AND IT IS NOT WORKING? YOU ARE GOING TO EXAMINE IT A LITTLE MORE CLOSELY, AND THEN WHAT'S GOING TO HAPPEN YOU CAN DETERMINE THERE IS MARIJUANA, AND YOU ARE GOING TO GO TO LAW ENFORCEMENT. THAT WOULD BE JUST A VERY RISKY WAY FOR YOU TO GET YOUR PRODUCT TO MARKET HERE IN THE UNITED STATES BY SECRETING IT IN THAT MANNER.

SECOND, IT IS JUST A VERY RISKY WAY TO DO BUSINESS. YOU ARE GOING TO PUT THIS MARIJUANA IN THE CAR AND THEN HOPE YOU FIND THE GUY SOMETIME LATER. YOU ARE GOING TO SNEAK IT IN FROM TIJUANA AND TRY TO CATCH UP WITH HIM. YOU HAVE NO IDEA WHERE HE IS GOING, WHAT HE IS DOING. HOW ARE YOU GOING TO FIND YOUR PRODUCT? IT JUST DOESN'T MAKE SENSE WHEN YOU GOT SOMETHING WORTH THAT MUCH MONEY. YOU ARE A SOPHISTICATED DRUG

ORGANIZATION, YOU ARE NOT GOING TO BRING IT TO MARKET IN THAT MANNER, BECAUSE IT DOESN'T MAKE SENSE, AND IT'S NOT A REASONABLE WAY TO DO BUSINESS.

THE THIRD REASON WE KNOW THAT THE DEFENDANT KNEW THAT IT WAS MARIJUANA WAS HE WAS NERVOUS. WHEN HE WAS ENCOUNTERED BY INSPECTOR CRUZ WHEN HE CROSSED THE BORDER HE WAS NERVOUS. WHY WAS HE NERVOUS? HE WAS NERVOUS BECAUSE HE GOT CONTRABAND IN THE VEHICLE. HE WAS AVOIDING EYE CONTACT AND HIS VOICE WAS IN DISTRESS.

MR. WINTER IS GOING TO ARGUE UP AND DOWN, AND IT IS A DIVERSION. YOU CAN THINK ABOUT IT FOR WHAT IT IS WORTH. WE LIVE IN A VERY MODERN AGE WHERE PEOPLE USE WORD PROCESSORS, AND THERE MIGHT HAVE BEEN A TYPO IN INSPECTOR CRUZ'S REPORT. AND MR. WINTER IS GOING TO SAY BECAUSE THERE IS A TYPO IN THE REPORT, HE CANNOT BELIEVE HIM THAT THE DEFENDANT WAS NERVOUS. BUT YOU ARE GOING TO HAVE TO MAKE YOUR OWN INDEPENDENT CONCLUSION ABOUT THAT, BUT I WOULD ASSERT TO YOU INSPECTOR CRUZ TESTIFIED FROM THE STAND THAT OUT OF THE THOUSAND VEHICLES HE SEES THERE IS MAYBE ABOUT FIVE OUT OF EACH THOUSAND THAT THERE IS A HIT AND ARREST AND PAPERWORK GENERATED. IT'S A BIG EVENT FOR THEM, AND HE HAD INDEPENDENT RECOLLECTION OUTSIDE OF HIS REPORT THAT MR. PINEDA WAS THE ONE DRIVING THE VEHICLE AND THAT MR. PINEDA WAS INDEED NERVOUS WHEN HE ENCOUNTERED HIM ON AUGUST 2ND, 2000.

SECONDLY AND IMPORTANTLY -- AND THIS IS A SUBTLE

THE WITNESS: THEN YOU HAVE THE PEOPLE WHO WAREHOUSE IT AT THE BORDER WHO STORE IT, AGAIN THE PEOPLE WHO BREAK IT DOWN INTO SMALLER PACKAGES, PEOPLE WHO SHAPE THE PACKAGES FOR THE VEHICLE, THE TYPE OF CONVEYANCE THEY ARE USING, PEOPLE WHO PROCURE THE VEHICLES, WHO HIRE THE DRIVERS, WHO RENT THE HOUSES ON THIS SIDE OF THE BORDER, THE STASH HOUSES, TO SECURE THEIR PRODUCT ONE THEY GET HERE. EVERYBODY HAS A SPECIFIC TASK.

Q. WHAT'S THE PURPOSE OF THE DRUG SMUGGLING ORGANIZATION?

A. LIKE ANY OTHER CORPORATION, TO MAKE MONEY.

Q. HOW DO THEY DO THAT?

A. BY BRINGING THE PRODUCT NORTH.THE DEMAND AND THE PRICE IS HIGHER IN THE UNITED STATES, AND ALL THE EFFORT IS TO MAKE MONEY. THAT'S WHY IT COMES SOUTH AND NORTH. IT'S SUPPLY TO DEMAND.

Q. IN YOUR 13 YEARS OF NARCOTICS ENFORCEMENT, HAVE YOU EVER KNOWN OF A CASE OF SOMEONE SMUGGLING MARIJUANA FROM THE UNITED STATES TO MEXICO?

A. NO, SIR.

Q. WHY NOT?

A. AGAIN, IT IS A LOT CHEAPER DOWN THERE. YOU MAKE MORE MONEY UP HERE, AND THAT IS THE SUPPLY COUNTRY AND THAT IS THE SOURCE COUNTRY. I MEAN, THE DEMAND IS UP HERE. THAT'S THE SOURCE AND THEY BRING IT UP HERE.

Q. AND ARE YOU FAMILIAR WITH THE TERM "PERSONAL USE AMOUNT OF